IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 6121 OF 2000

Kirloskar Kamgar Union)
A Trade Union duly registered)
under the Provisions of the)
Trade Unions Act, 1926, having)
its office at Kirloskarwadi,)
Dist.Sangli, Sangli.) .. Petitioners.

V/s.

1. Engineering Kamgar Union)
A Trade Union registered)
under the provisions of the)
Trade Unions Act, 1926, having)
its office at Kirloskarwadi,)
Dist.Sangli, Sangli.)
)
2. Kirloskar Brothers Ltd.,)
A Company duly incorporated)
under the provisions of the)
Companies Act, 1956 having)
its office at Kirloskarwadi,)
Dist.Sangli, Sangli.)
)
3. B.S.Bhadange, Member, Industral)
Court, Satara, In-Charge,)
Industrial Court, Kolhapur,)
Dist.Kolhapur.) .. Respondents.

Mr.N.V.Bukhari with Umesh Nabar for the Petitioner.

Mr.K.S.Bapat with Mr.Nitin Kulkarni for Respondent No.1.

Ms.S.D.Khot for the Respondent No.2.

CORAM : F.I. REBELLO AND
R.M. SAVANT, JJ.

DATED : 29th MARCH, 2007.

ORAL JUDGMENT : (Per Rebello,J.)

. The petitioners herein are aggrieved by the

order of the Industrial Court dated 19th July, 2000. By that order the Application filed by the petitioners under section 14 of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971, (hereinafter, for short, referred to as 'MRTU & PULP Act') has been rejected. It is the case of the petitioners that for the relevant period they were the majority union and consequent thereto, they are entitled to be recognised under the provisions of the MRTU and PULP Act.

2. The petitioners were registered as trade union some time on 12.07.1951. However, thereafter, for failure to comply with the provisions of the Trade Union Act, the petitioners' registration was cancelled but consequently restored.

3. On 18.12.1996 the petitioners had, in a meeting of the General Body, decided to prefer an application for replacement of the Respondent No.1 Union as the recognised union by the petitioners and accordingly made the application on 30th January, 1997. In the application they contended that 79% of the employees employed in the Respondent No.2 company were members of the petitioners Union from the period of July 1996 to December, 1996. It was also contended that the

petitioners union has not instigated, aided or assisted the commencement or continuation of the strike among the employees in the Undertaking which was deemed to be illegal under the Act, within six months immediately preceding the date of the application.

4. The respondent No.1 Union contested the claim of the petitioners by filing their written statement and sought dismissal of the application.

5. The petitioners by their application dated 07.08.1997 sought production of various documents of the respondent No.1 union to establish the fallacy in the contention raised in the written statement by the respondent No.1. That application was granted by the Industrial Court vide its order dated 19.01.1999. This was challenged by the respondent No.1 Union by filing writ petition No. 678 of 1999 before this court. It was allowed. The petitioners, thereafter, preferred one more application before the Industrial court, seeking appointment of Investigating Officer for verification of membership of both the Unions on 8.4.1999. The Industrial Court by order dated 03.05.1999 allowed the application for appointment of an investigating officer and the direction was issued to verify membership of both the unions. This was again challenged before this

court in writ petition No. 3504/1999. The petition was partly allowed by this court and the order was set aside and the matter was remanded back to the Industrial court for giving fresh hearing and passing the reasoned order. Thereafter, a Letters Patent appeal was preferred, which was also disposed off. The Industrial Court by its order dated 26.11.1999, allowed the said application by issuing various directions. It was again challenged by the respondent No.1 but that petition was withdrawn unconditionally. According to the petitioners they had preferred an application to the Industrial Court, seeking direction to the investigating officer to verify the membership of both the unions and for compliance of the order dated 03.05.1999. By order dated 17.01.2000, the Industrial court was pleased to allow the application with a direction to the investigating officer to verify the membership of both the unions. The list was filed by the Respondent Company alongwith the order dated 26.6.1999. The investigating officer submitted his report on 31st of March, 2000.

6. The respondent No.1 Union preferred an application, seeking direction to call upon the investigating officer to re-verify the membership of both the unions. The respondent No.1 preferred another application on 11.02.2000, seeking permission to produce

the documents before the investigation officer for verification. Both the applications filed by the respondent No.1 were rejected. A petition was filed by the respondent No. 1 union being writ petition No. 1159 of 2000, which was allowed by this court with direction to allow the respondent No.1 Union to produce documents before the investigating officer and to carry out verification of membership on the premises of the respondent No.1 Company. The investigating officer on 13.04.2000 submitted his 2nd report, holding that out of 1326 members as claimed by the petitioners union, 303 employees are exclusively members of the petitioners and out of 1358 members as claimed by the respondent No.1 union, 255 employees are exclusively members of the respondent No.1 Union and 1250 employees were common members of both the unions.

7. Thereafter, evidence was led before the Industrial Court. An application was moved by the petitioners union at the time of the argument to file affidavit of five hundred employees. By the impugned order the Industrial Court was pleased to reject the application preferred by the petitioners herein and consequently, the present petition.

8. On behalf of the petitioners,the learned counsel

has formulated three challenges :- (i) It is firstly submitted that by that order of the Industrial Court, there was a direction to carry out spot verification. That has not been done and consequently the order suffers from illegality and consequently liable to be set aside. (ii) It is secondly submitted that the petitioners herein had sought opportunity to lead evidence on the issues by way of affidavit that was wrongly rejected and on that count also the impugned order is liable to be set aside, and (iii) it is lastly submitted that at any rate the learned Industrial Court in considering that the petitioners were not registered trade union at the relevant time, has totally misdirected itself in law.

9. Insofar, the first contention is concerned, we have considered the order of the Industrial Court as also the order of this court. Though there are directions that verification of membership be carried out there is no specific order, neither of the Industrial Court or of this court, directing the spot verification. Thus, in our opinion, the first contention as raised is devoid of any merit and will have to be rejected.

10. Coming to the second contention about failure to

give opportunity to lead the documentary evidence, the Industrial Court has considered the said aspect in paragraph 18 of its order. The Industrial Court noted that affidavits were dated 02.05.2000 and the opportunity to lead evidence was sought only at the time of oral arguments. The petitioners while leading the evidence at the relevant time, did not seek opportunity to lead evidence by way of affidavits and produced the documentary evidence at a late stage. In that context, the learned Industrial Court was pleased to hold that the said affidavits cannot be read in evidence against what they have received at a late stage. In our opinion, it cannot be said that the said finding is perverse or suffering from any illegality. If the affidavits were available with the petitioners they had sufficient opportunity either of moving the application to produce those documents or bring those documents on record when their General Secretary was examined. This opportunity was not availed of by the petitioners. The investigating officer in his second report had held that neither the petitioners and the respondent No.1 Union were claiming a common membership in respect of all other 1008 employees. The finding given by the learned Industrial Court cannot be said, in these circumstances, to be perverse or unreasonable . In the light of that, we are not inclined to interfere with the findings of

the Industrial Court in exercise of our extra ordinary jurisdiction. That contention must, therefore, be rejected.

11. The last submission which has been advanced is in respect of the cancellation of registration. The factual position is that the Registrar of Trade Unions had cancelled the registration on the assumption that the petitioners are not complying with the statutory requirement of the provisions of the Trade Unions Act, 1926. The petitioners, thereafter, immediately complied with the said directions and registration was restored within a week or two thereafter. Merely, because at the relevant time, the registration may have been cancelled; at the highest, it would be an illegality and the moment it was restored that illegality would disappear and that could not have been a relevant criteria for consideration by the Industrial Court. Considering the above, in our opinion, the finding of the Industrial Court that the application could not have been considered as a recognised union, as their registration was cancelled, will have to be rejected.

12. However, considering the findings on the first two contentions, in our opinion, no case is made out for interference in exercise of our extraordinary

jurisdiction. In that light, Rule is discharged. There shall be no order as to costs.

(F.I.REBELLO,J.)

(R.M.SAVANT,J.)

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